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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,782	08/26/2003	Pierre Rondeau	RP-00128-US10	2064

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EXAMINER

FLEMING, FAYE M

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,782

Applicant(s)

RONDEAU ET AL.

Examiner

Faye Fleming

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/26/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the term "ATV-type tire" should be described in the specification. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The terms "ATV-type tire" is unclear; the examiner notes the applicant fails to provide a description in the specification of the terms.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao, et al (6,296,163).

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Kitao, et al teaches an ATV comprising a frame; only four wheels suspended from the frame, two of which are front wheels and two which are rear wheels, the front wheels defining a front axis and the rear wheels defining a rear axis; a power unit for driving at least one of the wheels disposed on the frame; a straddle-type seat supported by the frame, the seat including a main seat portion for a driver, the main seat portion having a rearward part, a secondary seat portion, rearward of the main seat portion; and a steering member connected to the frame comprising a handlebar, as shown in figures 1 and 2. The main seat portion includes a main supporting range. The secondary seat portion includes a secondary supporting range, and the secondary supporting range is elevated relative to the main supporting range. An open space is forward of the main seat portion and an open space is between the main seat portion and the secondary seat portion. With respect to the wheelbase, it would have been an obvious matter of design choice to have the wheelbase a specific size and/or a size within a specific range, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art, as well as, discovering the optimum or workable ranges involves only routine skill in the art. With respect to the main supporting range, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the main supporting range positioned rearwardly of the front axis by a percentage within a range, since it has been held that

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where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. With respect to the secondary supporting range, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the secondary supporting range elevated relative to the main supporting range within a specific range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. With respect to the ratio of a horizontal distance between a center of gravity of the power unit and the rear axis to the wheelbase, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have ratio within a specific range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. With respect to the main and secondary supporting ranges, it would have been an obvious matter of design choice to have the supporting ranges longitudinal separated by a specific distance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With respect to the straddle seat, it would have been an obvious matter of design choice to have the straddle seat a specific longitudinal length, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

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6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao, et al (6,296,163) in view of Pestotnik (6,182,784).

Kitao teaches the claimed invention except for a drive shaft. Pestotnik teaches an all-terrain vehicle comprising a drive shaft 106 operatively interconnecting the power unit with at least one of the rear wheel. Based on the teachings of Pestotnik, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ATV of Kitao to have a drive shaft to provide power to the wheels.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Notice of References Cited list references disclosing some features in common with the present invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Fleming whose telephone number is (703) 305-0209. The examiner can normally be reached on M-F (9:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Faye Fleming
Examiner
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05/10/04